IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2007

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
and
THE HONOURABLE MR. JUSTICE S.TAMILVANAN

Writ Petition No.3856 of 2004
and
W.P.M.P.No.4536 of 2004

M.Selvaraj ... Petitioner

Vs

1. The Commissioner of Income-Tax,
67 Race Course Road, Coimbatore.

2. The Chief Commissioner of Income Tax
rep. Union of India,
67-A Race Course Road, Coimbatore.

3. The Registrar,
Central Administrative Tribunal,
Chennai. ... Respondents.

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of the writ of certiorarified mandamus calling for the records pertaining to the order dated 31.01.2003 made in O.A.No.607 of 2002 of the 3rd respondent and the orders of the 1st respondent in his proceedings dated 08.11.2000 in C.No.258/Vig/98-99/CBE and that of the 2nd respondent in proceedings No. Nil dated 4.3.2002 and quash the same and consequently, direct the respondents to reinstate the petitioner in service with all consequential service benefits such as seniority, promotion etc. including payment of arrears of pay and allowances.

WEB COPY

For Petitioners : Mr. Venkatachalapathy, SC, for
M/s.M.Sriram.

For Respondents : Mr.M.Velusamy, ACGSC

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

(Order of the Court was made by ELIPE DHARMA RAO, J.)

The writ petition is directed against the order passed by the Tribunal in O.A.No.607 of 2002, dated 31.01.2003, wherein the Tribunal dismissed the original application filed by the applicant/writ petitioner challenging the order of dismissal of the petitioner from service passed by the Disciplinary Authority/the first respondent herein on the basis of the enquiry officer's report dated 27.03.2000, and also the order passed by the Appellate Authority/2nd respondent herein confirming the order of dismissal.

2. The brief facts leading to the filing of the writ petition is as follows:

i. When the writ petitioner was working as Inspector of Income Tax in Ward I(5), Coimbatore, he was charge sheeted on three grounds, on the basis of the complaint given by the merchant, one R.Subramani, Proprietor of M/s.R.S.M. Vegetable and Fruit Merchant, Stall NO.35, T.K.Market, Coimbatore-641 001, which read as follows :-

a) "While functioning as Inspector of Income-tax in Ward I(5), Coimbatore, Shri M.Selvaraj visited the premises of some traders and made certain enquiries even though he was not authorized to make such inquiries and harassed them in various ways, thereby exhibiting conduct which is unbecoming of a Government servant in gross violation of Rule 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964;

c) While functioning as Inspector of Income-tax in Ward I(5), Coimbatore,Shri M.Selvaraj demanded bribe and received a sum of Rs.25,000/- as advance towards such bribe from Shri R.Subramani, Proprietor of M/s.R.S.M. Vegetable & Fruit Merchant, Stall No.35, T.K.Market, Coimbatore-641 001, thereby exhibiting lack of integrity and conduct which is unbecoming of a Government servant in gross violation of clauses (i) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964; and

e) While functioning as Inspector of Income-tax in Ward I(5), Coimbatore, Shri M.Selvaraj attempted to coerce Shri R.Subramani, Proprietor of M/s.R.S.M. Vegetable and Fruit Merchant, Stall No.35, T.K.Market, Coimbatore-641 001 to withdraw the complaint made against him by R.Subramani before the Commissioner of Income-tax, Coimbatore, and by such conduct Shri M.Selvaraj has exhibited lack of integrity and conduct which is unbecoming of a Government servant, thereby violating the provisions of clauses (i) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ii.The writ petitioner denied all the charges. An Enquiry Officer was appointed to conduct an enquiry in this regard. The Enquiry Officer, on examination of witnesses and on consideration of materials placed on record, submitted his report on 27.03.2000 holding that all the three charges levelled against the writ petitioner were found proved.

iv.After completing all the formalities, viz., issuance of Show Cause Notice to the petitioner and on receipt of explanation from him in response to the said Show Cause Notice, the Disciplinary Authority, passed the order of dismissal, dismissing the writ petitioner from service, on 08.11.2000, which, on appeal, was confirmed by the Appellate Authority, viz., the second respondent herein, by order dated 26.12.2000. Aggrieved of the said orders passed by the Disciplinary and the Appellate Authorities, the original application was preferred before the Central Administrative Tribunal, Chennai, the third respondent herein.

vi.The Tribunal, after considering the facts and circumstances of the case and perusing the materials available on record, dismissed the original application filed by the applicant/writ petitioner on the ground that the Enquiry Officer, after relying on the evidence let in before him, both oral and documentary, came to the conclusion that the charges levelled against the petitioner were found proved, based on which report, the Disciplinary Authority has rightly dismissed the petitioner from service and there was no valid reason to interfere with the order of dismissal. Aggrieved of the said order passed by the Tribunal, the present writ petition was filed by the petitioner.

3. Heard the learned Senior Counsel appearing for the writ petitioner and the learned Additional Central Government Standing Counsel appearing for the respondents.

4. As seen from the order of dismissal passed by the Disciplinary Authority, it is clear that three charges were framed against the petitioner on the ground that while he was working as Inspector of Income-Tax, Ward I(5), Coimbatore, he visited the premises of four traders, viz., (i) R.Subramani on 13.11.1998, (ii) M.Selvam on 9.9.1998, (iii) C.N.Palaniswamy on 19.11.1998 and (iv) C.L.Vincent on 19.11.1998, and harassed them, demanded bribe and also coerced R.Subramani to withdraw the complaint given by him, which was made against the writ petitioner. He denied all the charges by his letter dated 4.7.1999. An Enquiry Officer was appointed on 9.7.1999. During the enquiry, the Enquiry Officer examined the above four witnesses and recorded their evidence. According to them, the petitioner visited the premises of the above said witnesses, which is outside his jurisdiction, and made enquiries without getting prior permission from his superior officer. During the enquiry, one Rajagopal, Joint Commissioner of Income Tax, Range-I, Coimbatore, was also examined, who deposed that he did not give any permission to the petitioner to conduct any inspection in the premises of the above witnesses. The Enquiry Officer, after conducting a detailed enquiry and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

after taking into consideration the depositions made by the witnesses as well as the recorded telephonic conversation, which the petitioner had with the complainant, found that it was established beyond reasonable doubt that the petitioner was not authorised under Section 133 A to conduct enquiries of any kind in the aforesaid business premises and the petitioner without getting any power/authorisation from the superior officers conducted enquiries and while doing so, he also demanded bribe and came to the conclusion that all the charges levelled against the petitioner were found proved. He submitted his report on 27.03.2000, which was served on the petitioner on 28.03.2000. The petitioner submitted his reply on 25.04.2000, wherein he denied all the charges levelled against him and stated that there were contradictions in the evidence of the witnesses during cross examination and there was also delay on the part of the complainant in giving complaint against the petitioner and he also requested for re-examination of the defence witnesses, which was rejected by the Enquiry Officer on the ground that there were no valid materials placed before him for re-examination of the said witnesses. Thereafter, the Enquiry Officer was directed by the Disciplinary Authority to hold a limited enquiry for the specific purpose of entertaining the defence witnesses for examination, thereby given one more opportunity to the petitioner to present his case and to prove his innocence. Though the Enquiry Officer was given him several opportunities to appear for the hearing and to produce his witnesses for examination, the petitioner did not chosen to produce them. After completing the limited enquiry, the Enquiry Officer submitted his second report dated 12.09.2000 before the Disciplinary Authority, which was served on the petitioner on 15.09.2000 and the petitioner sent his reply on 30.10.2000 raising objections to the above said report and claimed that he was innocent and ignorant.

5. The Disciplinary Authority, while agreeing with the findings given by the Enquiry Officer by applying his mind independently on the evidence available on record, fully satisfied that the findings of the Enquiry Officer were correct and therefore, came to the conclusion that all the charges levelled against the charged official, viz., the petitioner herein, were proved beyond reasonable doubt and the petitioner, by the above said acts, had failed to maintain absolute integrity and had exhibited conduct unbecoming of a Government servant thereby violating the provisions of Rules 3(1)(i) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964 and accordingly, imposed the penalty of dismissal from service.

6. It was contended before the Tribunal that the Disciplinary Authority ought to had appreciated that the charges were motivated and false allegations were made by the vested interests in the business community, who were angered by the persistence and sincerity of the petitioner/applicant in doing his duty and charge No.1 does not disclose any misconduct on facts or in law and no motive or mala fide intention was attributed when he framed the charges on 08.06.1999. Moreover, when the applicant conducted the survey as per the instructions of the Income Tax Officer as required under Section 133 A of the Income Tax Act, that is, pertaining to authorisation before conducting survey. Therefore, the conduct of of the applicant/petitioner in making survey was in accordance with law and the Disciplinary Authority should not be proceeded against

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the petitioner at the instance of the business people, who were aggrieved of the above said survey conducted by the writ petitioner. He also raised other grounds on the basis of the above stated facts and circumstances.

7. On the other hand, the learned counsel for the respondents submits that the order passed by the Disciplinary Authority was sustainable under law.

8. The Tribunal, on consideration of facts and circumstances of the case and after hearing both sides, dismissed the original application filed by the applicant, thereby confirming the order passed by both the Disciplinary Authority and the Appellate Authority in dismissing the applicant/writ petitioner from service, against which, the present writ petition was filed.

9. Heard the learned counsel appearing on either side and perused the materials available on record. The petitioner faced three charges at the instance of one Subramani against whose shop survey was conducted by the petitioner and found that though the said Subramani is having assessable income to pay income tax, he evaded to pay tax, and after noticing the same by virtue of the above inspection and survey, he was likely to be prosecuted. Therefore, the said Subramani foisted a false complaint against the writ petitioner with the above said allegations, on the basis of which, the enquiry was contemplated and further, on the basis of the enquiry report, punishment was imposed dismissing the writ petitioner from service.

10. With regard to conduct of survey by Income Tax Authority, the prior permission has to be obtained under Section 133-A of the Income Tax Act, which contemplates Power of Survey, which reads as follows:-

> " 133-A (1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter-
>
> (a) any place within the limits of the area assigned to him or
>
> (b) any place occupied by any person in respect of whom he exercised jurisdiction, or
>
> (c) any place in respect of which he is authorised for the purposes of this section by such income tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place.

11. Therefore, when an income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place, has to obtain authorisation from the Income-tax Authority. The petitioner, who is the Inspector of Income-Tax, comes within the meaning of Income-Tax Authority and he is working in Ward I(5), Coimbatore. Though it is contended that without

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

authorisation from the Income-Tax Authority, the petitioner has conducted survey or inspection at the shop of the complainant, Mr.Subramani, along with others, but, during the course of evidence, it has been recorded in the Cross Examination of the said Rajagopal, the Income-tax Authority, that he has granted permission to inspect the area by the petitioner. The petitioner has succeeded in recording the evidence in the following manner:-

Cross examination dated 23.02.2000 with Shri K.Rajagopal. The Q and A are as under:-

Q. Did you give instruction to your inspector to conduct enquiries for unearthing new assessees.

A. Yes. I have given general instructions.

From the above, there is no question of specific direction/ instructions to make enquiries.

a) In office practical life, even for survey u/s. 133 A, most of surveys- suggestions and survey operations were done only on the basis of oral instructions and occasionally in writing. In ward I(5), cbe, I assisted/suggested atleast 27 survey u/s. 133 A cases only after enquiry by oral. This can be verified from the office records.

b) Please refer my confidential report for the period from 1.4.98 to 31.3.99 - part 1 to be filled in by the administration section in column no.8 - main duties assigned 'assisting to the ITO in assessment work, enquiries, audit revision collection etc.' From the above, the enquiries are routine work, thus no question of authorised inquiries or not authorised inquiries. Anyhow, I informed to the office on the same time of my enquiry.

c) Please refer my report dated 30.11.98, addressed to the ITO Ward I(5), Cbe in 1st para "As per the direction and instruction of the incometax officer, ward I(5), CBE, ... investment". This was accepted by the ITO ward I(5), cbe on 30.11.98. From 30.11.98 to till date, no objection was received from him. So the inquiries made by me were authorised one.

d) I have reported the inquiry in the case of Shri R.Subramani on 18.11.98 voluntarily, but the enquiry was conducted on 13.11.98. 13th was Friday, 14th and 15th Saturday and Sunday, 16th Monday, I assisted for survey u/s. 133A with my ITO Shri K.Rajagopal. This was accepted in his report dated 21.2.2000. Please refer Q and A 12. 17th also I assisted for survey. I could not remember the case. On 18th, I came to office earlier than normal office hours and prepared a report in the case of R.Subramani and reported voluntarily to the ITO about the enquiry in the case of Shri R.Subramani.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

e) On 18.11.98, I discussed with ITO ward I(5), about the information given by R.Subramani in the case of Shri C.L.Vincent that he has potential business, one is having at T.K.Market and another business shop at Mettupalayam Road, Coimbatore. After getting the ITO's oral instruction/approval, I went to Mettupalayam road (M.G.R. Market) Coimbatore. On 19.11.98, from the shop of Shri C.L.Vincent, I telephoned to the ITO about the inquiry in the case of Shri C.L.Vincent. The ITO directed me to come back and give report. I understood that I should give report after making enquiry. So I asked Shri C.L.Vincent to write his business activities, addressing to ITO Ward I(5), CBE.

On 19.11.98, C.L.Vincent has not given or shown his permanent account no. to me. If he had shown or given his permanent account no. on that day, I would not have asked him to write his income tax details from him."

12. From the above evidence, which was recorded during the cross-examination of the said Rajagopal, who is the Income-tax Officer, it is clear that he gave authorisation to inspect the area by the petitioner. Therefore, once he has authorised the petitioner to inspect the area, accordingly, the petitioner has inspected the area and found that the complainant is having assessable income for tax. The complainant, in order to evade from submitting his returns for consideration and assess the income for tax, made a complaint, on the basis of which, the charges were framed. Therefore, the Department should not have taken the complaint as a basis to frame charges for conducting the enquiry and thereafter removing the petitioner from service. Once, the authority has permitted the petitioner to conduct inspection, it satisfies the provisions of law U/s.133 A of the Income-tax Act, and therefore, the inspection can not be termed as unauthorised inspection, for which, the petitioner has violated the code of conduct Rules.

13. Therefore, considering the above said facts and circumstances of the case and after going though the materials available on record, we are of the considered opinion that the petitioner has conducted the inspection within the area authorised him by the Income Tax Authority and found that the complainant Subramani is having assessable income for tax. Therefore, the Disciplinary Authority should not have initiated the departmental enquiry against the petitioner on the ground that he has unauthorisedly inspected the shop of the complainant and violated the Code of Conduct.

14. The second circumstance that the petitioner has conducted inspection in the shop of the complainant/Subramani, which is not within the jurisdiction, is concerned, when the petitioner has gone to the above said shop, he contacted the Income Tax Authority and the Income Tax Authority, in turn, has instructed the petitioner to proceed with inspection and directed him to submit the report of inspection and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

accordingly, the petitioner submitted his report of inspection on 18.11.1999. Therefore, it is clear that the petitioner has followed the instructions given by his superior officer, viz., the Income Tax Authority, in discharging his duties.

15. The third circumstance is that though inspection was conducted by the petitioner on 13.11.1998, the complaint was given only on 25.11.1998. As far as this circumstance is concerned, when it is noticed that there is delay in making a complaint against the petitioner by the said Subramani, he gave another complaint by way of explanation for the delay in submitting the complaint on 7.12.1998.

16. By going through the above said circumstances, we are of the considered opinion that the inspection conducted by the petitioner is as per the authorisation required under Rule 133 A of the Income Tax Act and the department should not have proceeded against the petitioner at the instance of a tax evader, who gave the complaint against the petitioner only to protect his interest and to evade from the further consequences for not paying the tax. We also found that
the action of the petitioner is legal and it is within the provisions contemplated under Section 133 A of the Income Tax Act and his action in conducting inspection in the premises of the complainant is perfectly correct. The Department, instead of protecting the officer, who discharged his duty in the interest of the Department, at the instance of a tax evader, proceeded against the officer and removed him from service, which, in our opinion, is unfortunate and illegal and we are of the further opinion that the piece of evidence recorded during cross-examination of Mr.Rajagopal, the Income Tax officer, has lost sight of by the Enquiry Officer, the Disciplinary Authority and the Honourable Tamil Nadu Administrative Tribunal, and therefore came to a wrong conclusion, which amounts to miscarriage of justice. Therefore, we are of the view that the order passed by the Tribunal and the impugned order are liable to be set aside. Once we have held that the complaint made against the petitioner at the instance of the complainant was only to protect him from then prosecution from evading tax, the other charges are also liable to be set aside as without basis. Accordingly, the impugned order passed by the Tribunal is set aside. The writ petition is allowed. Connected M.P. is closed. No costs.

bs/

WEB COPY

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Commissioner of Income-Tax, 67 Race Course Road,
   Coimbatore.

2. The Chief Commissioner of Income Tax, Union of India,
   67-A Race Course Road, Coimbatore.

3. The Registrar, Central Administrative Tribunal, Chennai.

+1 cc to Mr.M.Sriram, Advocate Sr.No.59896.

+1 cc to Mr.M.Veluswami, Advocate Sr.No.60160.

VG(CO)
dcp/19.11 W.P.No.3856 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/